

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DONIEL CARTER

v.

JURY TRIAL MINUTES

**ERIKA WATSON and
TARA WEIDEMANN [sic]**

Case No. 18-cv-0727-bhl

HONORABLE BRETT H. LUDWIG presiding

Dates of Trial: 11/1/21 – 11/4/21

Deputy Clerk: Kris B/Ross M

Court Reporter: John Schindhelm

Appearances:

DONIEL CARTER in person and by:

Nathaniel Cade, Jr. and Lisa Goldman

ERIKA WATSON in person and by:

David J Lang

TARA WEIDEMAN in person and by:

Brandon Flugaur and Katherine Polich

MONDAY, November 1, 2021

8:44 AM Court in session. Case called. Appearances made.

Court rules on pending motions in limine:

Defendant Weideman's motion [76-1] to exclude any argument that consent is not a defense to plaintiff's Eighth Amendment Claim is granted in part and denied in part.

Defendant Weideman's motion [76-2] to exclude testimony or other secondary evidence about the Sports Illustrate magazines, notes, and pictures is denied.

Court turns to *voir dire*. 25 jurors have reported; 13 will be seated in the jury box and the remaining jurors will be seated in the gallery. Court will instruct full venire to listen closely to all questions. If a juror from the box is stricken for cause, a replacement will be called from the gallery. Plaintiff will have 3 strikes and defendants will share 3 strikes as discussed at the pretrial. Defendant Weideman has a health condition which will require her to leave the courtroom from time to time. Parties have no objection.

Court addresses witness scheduling. Attorney Cade anticipates calling Clements, Goggins, Medema, Klapper and Schueler today; then 3 of plaintiff's family members tomorrow morning.

9:07 AM Court will circulate a clean set of proposed jury instructions and verdict form during the break. Court is not inclined to give an instruction on consent; case is about deliberate indifference-Eighth Amendment. Failure to protect seems more appropriate as to defendant Weideman.

9:10 2:16 PMM Recess (CSO Eder to Rm 190)

Court in session. (*Jury Profile List provided to the parties.*)

9:25 AM Jury panel brought to courtroom.

Court makes introductory remarks; 25 prospective jurors sworn.
Voir dire commences.

9:55 AM Sidebar with Juror #5.
End of sidebar.

10:00 AM Court excuses Juror #5; Juror #15 is called to jury box for colloquy with the Court.
Voir dire to all resumes.

10:11 AM Court excuses Juror #1; Juror #16 is called to jury box for colloquy with the Court.

10:14 AM Parties do not have any follow-up questions for the jury.
Parties exercise peremptory challenges.

10:27 AM **Jurors 6, 7, 8, 11, 12, 14, and 15 are selected to serve.**

10:28 AM Court excuses balance of jury pool.
Clerk administers oath to jury.
Court addresses housekeeping matters.

10:37 AM Jury out.

10:38 AM Mr. Lang advises that Ms. Polich will give her opening first but for closings they will reverse the order.

10:39 AM Recess

11:08 AM Court in session. (*Parties address technical issues with IT staff.*)

11:10 AM Jury in.
Court gives preliminary instructions to jury.

11:20 AM Plaintiff's opening by Ms. Goldman.

11:52 AM Defendant Wiedemann's opening by Ms. Polich.

12:08 PM Defendant Watson's opening by Mr. Lang.

12:25 PM Plaintiff's objection.
Sidebar

12:30 PM End of sidebar. Objection is overruled.
Continued opening by Mr. Lang.

12:32 PM Jury out.

12:34 PM Lunch (*Counsel to return by 12:30 pm*)

1:34 PM Court in session.

1:35 PM Court addresses objection in opening- motion in limine #11
Jury in.
Plaintiff calls Marc Clements, Former Warden FLCI (by Zoom)
Witness sworn.

1:40 PM Direct examination by Mr. Cade.
Exhibit 9 is discussed.

1:54 PM Exhibit 12 is discussed.

1:57 PM Exhibit 2008 is discussed.

2:00 PM Exhibit 4 is discussed.

2:06 PM Exhibit 15 is discussed.

2:13 PM Exhibit 28 is discussed.

2:18 PM Exhibit 38 is discussed.

2:34 PM Exhibit 1 is discussed.

2:44 PM Cross examination by Mr. Flugaur.

2:59 PM Cross examination by Mr. Lang.

3:08 PM Redirect
Exhibits 1 (p 280) and 38 are discussed.

3:28 PM Witness is excused.

3:29 PM Jury out.

3:30 PM Recess

3:44 PM Court in session. Discussion regarding admission of exhibits.

3:46 PM Jury in.

Plaintiff calls Officer Jason Medema, FLCU

Witness sworn.

Direct examination by Mr. Cade.

Exhibit 4 is discussed.

Exhibit 16 is discussed.

4:09 PM Cross by Ms. Polich.

4:16 PM Cross by Mr. Lang.

4:29 PM Redirect

4:36 PM Witness is excused.

Plaintiff calls Captain Brian Schueler, FLCU

Direct examination by Mr. Cade.

Exhibit 1(pp 320, 321, 313, 290) are discussed.

End of direct.

5:02 PM Court instructs jury to return by 9:00 a.m.

Jury out.

Court will be available at 8:30 am to address any matters that should arise.

Capt Schueler is permitted to complete his testimony by zoom tomorrow.

5:06 PM Court is adjourned for the day.

TUESDAY, November 2, 2021

8:53 AM Case called. Appearances remain the same.

Discussion regarding witness scheduling: Goggins by zoom followed by Klapper in person.

9:00 AM Discussion regarding exhibits: parties to confer and reach agreement.

9:05 AM Jury in.

9:06 AM Further testimony of Capt.Schueler *(by video conference-zoom)*.

Witness remains under oath.

9:07 AM Cross examination by Mr. Flugaur.

Cross examination by Mr. Lang.

9:11 AM Redirect by Mr. Cade.

Exhibit 1 (p 286) is discussed.

Recross by Mr. Flugaur.

9:22 AM Witness is excused.

Plaintiff calls Kevin P Goggins, former Capt *(by video conference-zoom)*

Witness sworn.

Direct examination by Mr. Cade.

Exhibit 1 (p 320) is discussed.

Document bates #1557 is discussed.

9:35 AM Cross examination by Mr. Flugaur.

9:36 AM Cross examination by Mr. Lang.

9:38 AM Redirect.

9:43 AM Witness is excused.

Plaintiff calls Michelle Klapper.

Witness sworn.

9:45 AM Direct examination by Ms. Goldman.

Exhibit 1 (p 6) is discussed.

10:23 AM Exhibit 2008 is discussed.

End of direct.

10:30 AM Jury out.

Discussion re questioning of witnesses.

10:34 AM Recess

10:42 AM Jury in.

10:43 AM Cross examination by Ms. Polich.

10:47 AM Cross examination by Mr. Lang

10:50 AM Redirect
10:52 AM Witness is excused.
Plaintiff calls Tara F Weideman
Witness is sworn.
10:53 AM Examination by Ms. Goldman.
11:01 AM Exhibit 4
11:12 AM Sidebar (re fraternization offense as a first offense and termination)
11:16 AM Continued direct.
11:30 AM Jury out.
11:31 AM Recess
11:37 AM Jury in.
Continued direct.
Exhibit 8 is discussed.
11:48 AM Cross examination by Ms. Polich.
Exhibit 4 is discussed.
12:06 PM Jury out.
12:07 PM Lunch
1:08 PM Court in session.
Cross examination with Ms. Polich.
1:10 PM Cross examination with Mr. Lang.
1:23 PM Redirect
Exhibit 2 is discussed.
1:38 PM Recross by Ms. Polich.
1:39 PM Recross by Mr. Lang.
Witness is excused.
1:40 PM **Plaintiff calls Erika Watson**
Witness is sworn.
Examination by Ms. Goldman.
Audio played of 9/3/12 phone calls at 4:11 pm and 9:05 pm.
Audio played of 9/6/12 phone call at 11:53 am
2:17 PM Exhibit 16 is discussed.
2:31 PM Exhibit 23 is discussed.
2:47 PM Exhibit 25 is discussed.
2:58 PM Jury out.
3:13 PM Jury in.
3:16 PM Exam of Erika Watson continued.
3:33 PM Cross examination with Mr. Lang.
4:26 PM Cross examination with Ms. Polich.
4:29 PM Redirect.
4:42 PM Recross with Mr. Lang.
4:43 PM Jury out.
5:01 PM Court in recess.

WEDNESDAY, November 3, 2021

8:27 AM Court back in session. Case called. Parties discuss exhibits, special verdict, and jury instructions.
8:45 AM Jury in.
8:46 AM **Plaintiff calls Doniel Carter**
Witness is sworn.
Examination by Plaintiff Counsel
10:30 AM Jury out.
10:45 AM Jury in. Examination of Doniel Carter continued.
11:18 AM Cross examination with Mr. Flugman.

12:04 PM	Jury out.
1:04 PM	Jury in.
1:07 PM	Continued cross examination with Mr. Flugaur.
1:27 PM	Cross examination with Mr. Lang.
2:22 PM	Redirect.
2:28 PM	Re-Cross examination by Mr. Flugaur.
2:28 PM	Witness is excused.
2:29 PM	Jury out.
2:31 PM	All parties rest. Close of evidence. Discussion on special verdict form and jury instructions.
2:38 PM	Court in recess.
2:59 PM	Court back on the record.
3:03 PM	Jury in.
3:04 PM	Closing argument by Plaintiff.
3:54 PM	Closing argument by Defendant Weidman
4:16 PM	Closing argument by Defendant Watson.
4:38 PM	Redirect closing by Plaintiff.
4:53 PM	End of closing remarks. Jury instructions given by the Court.
5:16 PM	CSO sworn. Jury exits to deliberate.
5:24 PM	Jury in. Jury released until the morning.
5:27 PM	Court in recess.

THURSDAY, November 4, 2021

10:15 AM	Court back in session. Discussion with counsel about communication from jury.
10:30 AM	Court in recess.
10:48 AM	Court back in session. Discussion with counsel about communication from jury.
10:51 AM	Jury in. Court gives response to jury communication.
10:53 AM	Jury out.
1:32 PM	Jury notifies CSO Eder of verdict.
1:58 PM	Court back in session. All Parties present. Foreperson confirms that the jury has reached a unanimous verdict.
2:01 PM	Jury in.
2:03 PM	Jury out.
2:08 PM	Jury in.
2:09 PM	Verdict read on the record. Court polled jury.
2:11 PM	Jury excused from trial.
2:16 PM	Court in recess.